(31)

Single Bench (Criminal)

IN THE HIGH COURT OF JUDICATURE AT JABALPUR (MP)

CRIMINAL APPEAL NO. 418 /2000.

CRIMINAL APPEAL UNDER SECTION 374(2) OF THE CODE OF CRIMINAL PROCEDURE.

APPELLANT (IN JAIL) : Smt. Kamala @ Steo, wife of Purosoti, resident of village Panaraguda, police chowk-Amada, Dist. Navarangapur (Orissa)

- Versus -

RESPONDENT : State of Madhya Pradesh

(1637)

(25)

HIGH COURT OF CHHATTISGARH : AT BILASPUR.

Criminal Appeal No.418/2000.

Smt. Kamala @ Steo ... Appellant.

Vs.

The State of Madhya Pradesh ... Respondent.

* * * * * *

Judgment

(10-04-2001).

By.Hon.Shri R.S.Garg,J. :

The appellant being aggrieved by the judgment dated 4.1.2000, passed in Special Case No.71/99, by the learned Special Judge,Jagdalpur (Bastar),convicting the appellant for an offence punishable under Section20 (b)(i) read with Section 8 of N.D.P.S. Act,sentencing her to undergo R.I. for 3½ years and pay fine of Rs.5,000/-, in default of payment of fine to undergo further R.I. for 6 months, has filed this appeal.

2). The prosecution case in brief is that P.W.5 G.N.Singh had gone on patrol with Head-Constable Ghanshyam and others. At about 2.00 p.m., he received a news from the informer that a woman was carrying ganja with her. The said G.N.Singh prepared panchanama of the information and immediately proceeded towards the scene. Finding the present appellant with suspicious activities, the said officer gave a notice to the present

appellant under Section 50 of the Act, after seeking her consent took the search and could recover the ganja from the bags carried by her. Further search of the appellant was taken by P.W.4 Khatiza, who found that the present appellant was carrying ganja on her body also. The said ganja was weighed on the spot, two samples of 100 gms. each were drawn and, ganja and samples were properly packed and sealed. The accused was brought to the police station and first information report was registered and thereafter the information relating to entire incident was sent to the superior officer. After receiving the positive analytical report, the police filed the challan against the appellant. After recording the evidence and hearing the parties, the learned trial Court convicted and sentenced the appellant as referred to above.

3). Shri R.N.Jha, learned counsel for the appellant submits that as there is vast difference between Ex.P/1 and the notice Ex.P/4 on one hand and in the statements of P.W. 1 Archit and P.W.3 Ramlal on the other and as the recovery of the contrabands from the possession of the present appellant appears to be doubtful, the appellants deserves to be acquitted.

4). On the other hand, Shri P.Bharat, learned Panel Lawyer submits that juxtapose reading of Ex.P/1 and Ex.P/4 and the statements of P.W. 5 G.N.Singh, would make it clear that after receiving

the information, the said G.N.Singh immediately recorded the said information, proceeded towards the spot, gave a notice to the appellant ~~xxxx~~ in accordance with the Section 50 of the Act and after obtaining her consent, conducted the search personally and through P.W.4 Khatiza. He submits that the Court below was justified in convicting the appellant.

5). True it is that P.W.1 Archit says that when he had reached the spot, the present appellant Kamala was standing with the police officers and the bags were lying on the spot. But, this state--ment of P.W.1 Archit would not wash away the effect of the statement of P.W.3 Ramlal, who is yet another witness to the seizure. According to P.W.3 Ramlal, P.W.1 Archit had already reached the spot and in presence of these two witnesses, the search was conducted. In addition to this, from the statements of P.W.4 Khatiza, it would clearly appear that when she reached the spot, about 20-25 persons had already assembled. She was requested by G.N.Singh (P.W.5) to conduct the search of the present appellant. In accordance with the directions of P.W.5 G.N.Singh, she had taken the accused towards one-side and conducted her search. According to her, in the said search she could find ganja wrapped in plastic packets around the body of the accused. According to P.W.4 Khatiza, she had conducted the search in accordance with

the directions given to her . P.W.5 G.N.Singh clearly stated that after receiving the information from the informer, he recorded the information in writing,proceeded towards the spot and after giving a notice to the appellant, proceeded to take the search.

6). Shri R.N.Jha,learned counsel for the appellant submits that the present appellant is a non-Hindi person, therefore, so long as the contents of the notice Ex.P/4 were not explained to her, it cannot be held that the provisions contained under Section 50 of the Act were complied with.

7). The argument is mis-conceived. From the statements of P.W.5 G.N.Singh, it would clearly appear that he had a conversation with the accused in Halbi language. He had clearly stated that he gave oral information to the accused in Halbi language and the accused who could speak Halbi language had a conversation with him. The arguments even forgets the facts that the accused in her Court statement recorded under Section 313 Cr.P.C. does no-where say that she could not understand the language employed in the notice Ex.P/4 or she was unable to speak Halbi language. After going through the records, especially, the statements of P.W.3 Ramlal,P.W.4 Khatiza and P.W.5 G.N.Singh, I am unable to hold that the accused has been wrongly convicted. The Court below was

absolutely justified in convicting the appellant.

8). Shri R.N.Jha, learned counsel for the appellant submits that looking to the age of the present appellant and the fact that she is mother of small children, sentence deserves to be reduced to the period already undergone.

9). Shri P.Bharat,learned counsel for the State submits that looking to the quantity of ganja recovered from the custody of the present appellant, present is not a fit case for reducing the sentence to the period already undergone.

10). I have heard the parties.

11). From the records it appears that the appellant remained in jail for a period of three months as an under trial prisoner, after her conviction, she is in jail since 4-1-2000, i.e. she is in jail for a period of 15 months; by now, she must have undergone for a period of 18 months plus some remission.

12). Taking into consideration the quantity of ganja recovered from the present appellant and the fact that she does not appear bo be boot-legger, drug-pedlar or habitual offender, I am of the opinion that the sentence deserves to be reduced, but not to the period already undergone. The substantive jail sentence is reduced to 2 years. The appellant is already in jail; she will serve out the remaining sentence; Fine amount and the

default sentences are maintained.

13). The appeal to the extent indicated above is allowed.

Sd/-
R.S. Garg
Judge

/Subbu/.